

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ANTON/BAUER, INC.	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	3:01 CV 577 (CFD)
PAG, LTD.,	:	
Defendant	:	

RULING ON MOTION TO DISMISS

The third-party defendant, Alex DeSorbo, has filed a motion to dismiss the defendant/third-party plaintiff's third-party complaint [Doc. #29] on the basis of Federal Rules of Civil Procedure 12(b)(4) for insufficiency of process, and 12(b)(2) for lack of personal jurisdiction.

As to service of process, DeSorbo contended in his motion to dismiss that he was not served with a summons and complaint as of June 14, 2001. On August 9, 2002, the Court issued an order requiring the defendant/third-party plaintiff to file proof of service of the third-party complaint upon Alex DeSorbo. Pursuant to that order, the defendant/third-party plaintiff filed a copy of the summons, dated August 23, 2001, and the return of service, dated September 14, 2001. Thus, the record reflects that DeSorbo was served with a summons and complaint within 120 days of the date of the filing of the third-party complaint.¹ See Fed. R. Civ. P. 4(m). DeSorbo filed a response to the defendant/third-party plaintiff's submission, conceding that the defendant/third-party plaintiff had provided "a true and accurate copy of the proof of service of the third party complaint upon Alex De Sorbo," but requesting the Court to consider DeSorbo's

¹The third-party complaint was filed on May 25, 2001.

arguments for dismissal of the third-party complaint under Fed. R. Civ. P. 12(b)(2) based on lack of personal jurisdiction. Pl.'s Resp. at 2.

DeSorbo maintains that this Court lacks personal jurisdiction over him because the allegations of the third-party complaint are based on actions he took in his corporate capacity as president of Anton/Bauer. DeSorbo correctly notes that if personal jurisdiction is based on DeSorbo's transaction of business in Connecticut, this Court does not have personal jurisdiction over him for acts taken solely in his corporate capacity. See, e.g., Reese v. Arrow Financial Services, LLC, 202 F.R.D. 83, 89 (D. Conn. 2001); Adams v. Wex, 56 F. Supp. 2d 227, 230 (D. Conn. 1999) ("[P]ersonal jurisdiction may not be asserted over the president of a corporation [individually] based on the president's transaction of business in Connecticut where the president did not transact any business other than through the corporation."); Advanced Claims Service v. Franco Enterprises, 2000 WL 1683416, at *2 (Conn. Sup. Oct. 13, 2000) ("[T]he general rule is that there is no personal jurisdiction over nonresident officers of a corporation where their contact with the state was only in their capacity as a corporate officer."); Corporation for Independent Living v. Charter Oak Assoc., 1992 WL 79838, at *4 (Conn. Sup. Apr. 10, 1992) (to establish long-arm jurisdiction over corporate officer who did not reside in Connecticut, plaintiff must prove "that the non-resident transacted business in Connecticut in an individual capacity and not merely on behalf of a corporate employer") (emphasis omitted).

However, as noted above, DeSorbo does not dispute that he was served personally at 14 Progress Drive in Shelton, Connecticut on September 14, 2001. Service upon him while he was physically present in the state is sufficient to establish personal jurisdiction. Conn. Gen. Stat. § 52-57 provides that service may be made upon a defendant by leaving a summons and copy of the

complaint “with the defendant . . . in this state.” The Federal Rules of Civil Procedure also provide that service may be effected in such a manner. See Fed. R. Civ. P. 4(e)(1) (individual may be served pursuant to the law of the state where the district court is located); Fed. R. Civ. P. 4(e)(2) (individual may be served by delivering a copy of the summons and complaint to the individual personally). The United States Supreme Court has held that “service of process over a physically present nonresident, confers [personal] jurisdiction over that resident, regardless of whether he was only briefly in the state or whether the cause of action is related to his activities there” and does not violate the nonresident’s due process rights. Burnham v. Superior Court of California, 495 US. 604, 622 (1990); see also Kadic v. Karadzic, 70 F.3d 232, 246-47 (2d Cir. 1995) (the exercise of personal jurisdiction may based on mere physical presence). Thus, this Court has personal jurisdiction over DeSorbo based on his presence in Connecticut while served, and the defendant/third-party plaintiff need not establish that DeSorbo transacted any business in Connecticut in order to establish such jurisdiction.²

Accordingly, the motion to dismiss [Doc. #29] is DENIED.

SO ORDERED this ____ day of September 2002, at Hartford, Connecticut

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

²Additionally, though the third-party complaint alleges that DeSorbo resides in Connecticut, and DeSorbo does not dispute this allegation in his motion to dismiss, the Court need not address whether such allegations are sufficient to establish DeSorbo’s domicile in Connecticut, in light of its finding as to DeSorbo’s presence in Connecticut while served.